



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NI Industries, Inc., Vernon Division--
Request for Reconsideration
File: B-223990.3
Date: July 28, 1987

DIGEST

1. Arguments which amount to a reiteration of those previously considered by the General Accounting Office in deciding the initial protest do not provide a basis for reconsideration.
2. Decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization will be left to the discretion of the military agencies which must continually reassess current and future weaponry needs.

DECISION

NI Industries, Inc., Vernon Division (NI), requests reconsideration of our decision in NI Industries, Inc., Vernon Division, B-223990.2, June 16, 1987, 87-1 CPD ¶ ____. In that decision, we denied NI's protest concerning the proposed award of a sole-source cost-plus-no-fee contract (project Nos. 5860115B/5870115) by the Army Armament, Munitions and Chemical Command, Rock Island, Illinois, to the Scranton Army Ammunition Plant (SAAP), a government-owned facility operated by Chamberlain Manufacturing Corporation. The requirement was for the construction of fabrication facilities for a new projectile, the 155mm XM864. The Army restricted the procurement to SAAP on the basis of an identified need to maintain SAAP as a vital mobilization base facility in the event of a national emergency. NI had alleged that the mobilization base restriction was unwarranted.

We affirm our prior decision.

Briefly, the Army executed a Justification and Approval (J&A), which was approved by the Assistant Secretary of the Army on September 30, 1986. The J&A was for fiscal year 1987 contract actions involving SAAP. The authority cited for such actions was 10 U.S.C. § 2304(c)(3) (Supp. III 1985) which allows the head of a military agency to use other than competitive procedures in awarding a contract to a particular source or sources when such action is necessary to

maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization. Among the contract actions found to be required, the J&A specifically listed the present XM864 project (program No. 0115) as a requirement which would be procured from SAAP under the authority of the J&A. The reason cited for these proposed actions, including the XM864 project, was that "use of other than full and open competition will maintain [SAAP] in a 'warm' condition, and available in the event of a national emergency." The J&A further stated that SAAP is a vital component of the mobilization base. The J&A was proper in form and was approved by the appropriate authorities.

In its agency report, the Army further stated that production of other projectiles at SAAP would soon cease and that therefore failure to make this XM864 award would likely result in plant closing and loss of the work force at SAAP and the critical skill which that work force possesses.

In its initial protest, NI argued that the proposed sole-source award would deprive the firm, and other companies which had previously prepared engineering studies for this requirement, of the opportunity to compete for a requirement that easily can be met by modification of existing facilities for similar projectiles and would also leave the firm with seriously underutilized facilities. NI additionally argued that the statutory authority of military agencies to make noncompetitive awards under 10 U.S.C. § 2304(c)(3), supra, only extends to "maintaining" a manufacturer for mobilization purposes while the Army in this case was "establishing" a mobilization base manufacturer for a new projectile.

We stated that although it is the established policy of this Office to scrutinize closely sole-source procurement actions, it is also our view that decisions as to the producers that should be included in the mobilization base and restrictions required to meet the needs of industrial mobilization involve complex judgments which must be left to the discretion of the military agencies. See Wayne H. Coloney Co., Inc., 64 Comp. Gen. 260 (1985), 85-1 CPD ¶ 186. Since we found that the Army's J&A was proper in form and content, we had no basis to question the decision to restrict the procurement to SAAP. Further, while the protester argued that 10 U.S.C. § 2304(c)(3) did not apply here because the Army in this case was seeking to "establish" a manufacturer of the XM864, we stated that the fact remains that the J&A authorized award of the present requirement to maintain SAAP as a vital facility in producing projectile metal parts and that the statute authorizes

noncompetitive awards not only to maintain a manufacturer but also to maintain, as here, a facility. We therefore denied the protest.

In its request for reconsideration, NI again argues that the Army's J&A was flawed.^{1/} First, NI argues that the proposed sole-source award is improper because the "procurement is the first step in the establishment of a new mobilization base projectile production line [rather than the] maintenance of [SAAP] as a supplier of items it previously has been producing."

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of a decision is deemed warranted and must specify any errors of law made in the decision or information not previously considered. 4 C.F.R. § 21.12(a) (1986). In this regard, NI's argument is merely a reiteration of an argument previously raised by NI and considered in the original protest. As indicated above, NI argued that this procurement is intended to establish a manufacturer of XM864, and not to "maintain" a manufacturer, and thus 10 U.S.C. § 2304(c)(3), does not provide authorization to restrict competition for this requirement. We addressed this argument in our decision and specifically found that while the Army was seeking to "establish" a manufacturer of the XM864, the J&A authorized award of the present requirement to maintain SAAP as a vital facility in producing projectile metal parts. Therefore, this argument provides no basis for further consideration. BECO Corp.--Reconsideration, B-219350.2, June 20, 1985, 85-1 CPD ¶ 707.

Next, NI argues that the J&A does not demonstrate a basis for establishing the XM864 facilities at SAAP since the J&A makes no reference to the establishment of "totally new production facilities" but merely states that the contract would be awarded for the purposes of plant operations, layaway, project funding, and maintenance. NI also asserts that the J&A refers to maintaining SAAP in a "warm" condition only with respect to SAAP's existing facilities for other projectiles.

Our review of the J&A again confirms our previous conclusion that the Assistant Secretary of the Army approved, by means

^{1/} The Army withheld the J&A from the protester during our initial consideration of the protest. The protester subsequently obtained it from the Army under the Freedom of Information Act prior to filing its reconsideration request.

of the J&A, various contract actions involving SAAP for fiscal year 1987. Among the contract actions listed, the J&A specifically lists program No. 0115 (the XM864 project) as a requirement which would be procured from SAAP under the authority of the J&A. In our view, this contract action was specifically authorized by the Assistant Secretary of the Army to maintain SAAP as a vital facility in producing projectile metal parts. We disagree that the J&A reference to maintaining SAAP in a "warm" condition was limited to SAAP's existing facilities for other projectiles. The J&A language is broader, stating the need to use noncompetitive procedures to maintain the SAAP facility for use in the event of a national emergency and as a vital component of the mobilization base for metal parts. While the J&A notes SAAP's current critical production of certain projectiles, we do not view this language as showing any intent to limit the authorization solely to these projectiles, especially since the XM864 project was specifically listed in an earlier section of the J&A.

Furthermore, decisions as to the producers that should be included in the mobilization base and the restrictions required to meet the needs of industrial mobilization must be left to the discretion of the military agencies which must continually reassess current and future weaponry needs. See Martin Electronics, Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504. NI's evident disagreement with the Army's decision does not demonstrate that the Army abused its discretion. See Urdan Industries, Ltd., B-222421, June 17, 1986, 86-1 CPD ¶ 557. We therefore again conclude that the J&A was proper in form and content, and provided the appropriate legal authority for award to SAAP as a vital facility.

NI has requested a conference in this matter. We will not conduct a conference on a reconsideration request, however, unless the matter cannot otherwise be resolved expeditiously. Global Assoc.--Reconsideration, B-212820.2, Aug. 21, 1984, 84-2 CPD ¶ 203. We do not believe a conference is warranted in this case.

Our prior decision is affirmed.

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